

No. 17432

United States
Court of Appeals
For the Ninth Circuit

OLSON TOWBOAT COMPANY, OLSON
STEAMSHIP CO., The Tug "JEAN NEL-
SON," the Barge "FLORENCE,"

Appellants,

vs.

JOAO DUTRA,

Appellee.

Transcript of Record

Appeal from the United States District Court for the
Northern District of California,
Southern Division.

FILED
SERIALIZED
FROM U.S. DISTRICT COURT



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THE HISTORY OF THE UNITED STATES OF AMERICA
FROM THE EARLIEST PERIOD TO THE PRESENT
BY CHARLES C. SMITH

CHAPTER I
THE EARLY PERIOD

1. The discovery of America by Christopher Columbus in 1492.

2. The early exploration of the continent by Spanish and English navigators.

3. The establishment of the first permanent English colony at Jamestown in 1607.

4. The growth of the colonies and the increasing tension between them and the mother country.

5. The American Revolution and the Declaration of Independence in 1776.

6. The formation of the United States Constitution and the establishment of the federal government.

7. The early years of the Republic and the expansion of the United States.

NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD

JOHN H. BLACK,
HENRY W. SCHALDACH,
233 Sansome Street,
San Francisco 4, Calif.,
Attorneys for Appellants.

FRANCIS J. SOLVIN,
79 Post Street,
San Francisco, Calif.,
Attorney for Appellee.



In the District Court of the United States, Northern
District of California, Southern Division

No. 28020—In Admiralty

JOAO DUTRA,

Libellant,

vs.

OLSON TOWBOAT COMPANY, OLSON
STEAMSHIP COMPANY, the Tug JEAN
NELSON, the Barge FLORENCE,

Respondents.

LIBEL FOR DAMAGES

Action Under Special Rule for Seaman to Sue
Without Security and Prepayment of Fees (28
U.S.C., Section 1916)

Libellant complains of respondents and for cause
of action civil and maritime, of tort and damage,
alleges:

I.

Libellant is a seaman pursuing his remedies under
the authority of Section 33 of the Merchant Sea-
man's Act of June 5, 1920, and all amendments
thereto, and all other applicable maritime and tort
law in the premises.

II.

Upon information and belief and at all times
herein mentioned respondent Olson Towboat Com-
pany and respondent Olson Steamship Company
were and still are domestic corporations duly organ-
ized and existing under and by virtue of the laws
of the State of California, engaged in the shipping

business as shipowners and/or operators of ships with an office and place of business in San Francisco, California, and within the jurisdiction of this honorable court.

III.

Upon information and belief, that at all times herein mentioned respondent Olson Towboat Company owned or chartered and operated the tugboat Jean Nelson and Olson Steamship Company owned or chartered and operated the barge Florence and such respondents were in possession and control of said tugboat and barge.

IV.

That at all times herein mentioned libellant was employed as a seaman, to wit: A deckhand, by said respondents to work on said tugboat and barge and was acting in the course and scope of his employment. That on or about the 1st day of November, 1959, at or about the hour of 10:30 a.m. of said day, while libellant was engaged in his duties as a deckhand aboard said barge, respondents, their agents, servants and employees so carelessly and negligently operated said tugboat and barge so as to allow a mooring cable to become frayed and defective and while libellant was handling said cable, it so lacerated his right index finger so as to cause a portion of same to be consequently amputated.

V.

That as a result of the negligence of respondents, their agents, servants and employees, libellant suffered an amputation of his right index finger and

said injury has caused and continues to cause libellant great mental, physical and nervous pain and suffering and said injury results in some permanent disability to libellant's general damage in the sum of Seven Thousand Five Hundred Dollars (\$7,500.00).

VI.

Solely by reason of the premises and as a proximate consequence thereof, libellant has been disabled, has suffered and will suffer physical pain and mental anguish, has been and will be prevented from attending to his work as a seaman at established wage scales; has lost and will lose sums of money which he otherwise would have earned and has been obliged to undergo medical treatment, care and attention and is still undergoing the same; that he is informed, believes and alleges that there will be permanent residuals resulting from said injury all to his special damage in a presently unascertainable amount, the allegations of which plaintiff prays leave to insert by amendment when fully ascertained.

As and for a Second, Separate and Distinct Cause of Action, Libellant Alleges:

I.

Realleges all and singular, each and every allegations in Paragraphs I, II, III, V and VI of the first cause of action as though set forth herein in full.

II.

While libellant was engaged in his duties as a deckhand and a member of the crew aboard the

barge Florence on or about the 1st day of November, 1959, at or about the hour of 10:30 a.m. of said day, respondents, their agents, servants and employees allowed the aforesaid tug and barge to be unseaworthy in that respondents, their agents, servants and employees failed to supply libellant with a safe place within which to work while he was aboard said barge in that the mooring line was frayed and defective; failed to warn libellant of the dangers to be encountered in handling such a frayed and defective line; failed to set up and maintain proper safeguards and precautions upon said tug and barge and failed to promulgate and enforce proper and safe rules for the safe conduct of libellant's work.

Wherefore, libellant prays judgment against respondents and each of them in the sum of \$7,500.00 general damages, for costs of suit and for general relief, that respondents appear and answer the libel herein.

/s/ FRANCIS J. SOLVIN,
Proctor for Libellant.

Duly verified.

[Endorsed]: Filed March 30, 1960.

[Title of District Court and Cause.]

ANSWER TO LIBEL

Comes now respondent, Olson Towboat Company, and answering libellant's Libel on file herein, alleges as follows:

As to the First Cause of Action:

I.

Admits the allegations of paragraph I.

II.

Admits the allegations of paragraph II.

III.

Admits the allegations of paragraph III.

IV.

Admits that libelant was employed as a seaman aboard said vessel, and denies each and every, all and singular, the remaining allegations of said paragraph IV.

V.

Denies the allegations of paragraph V; specifically denies that libelant has been damaged in the sum of \$7,500.00 or in any other sum or sums, or otherwise, or at all.

VI.

Denies the allegations of paragraph VI.

As to the Second Cause of Action:

I.

Answering the allegations of paragraph I, respondent refers to all the admissions, denials and allegations contained in its answer to the first cause of action, and incorporates the same herein by reference thereto as if the same were set forth herein in full.

II.

Denies the allegations of paragraph II.

As and for a Second Separate and Distinct Answer and Defense to Said Libel and Each of the Causes of Action Contained Therein, respondent alleges that libelant was guilty of carelessness and negligence in and about the matters and things set forth in his Libel, in that said libelant failed to make reasonable use of his natural faculties, including that of eyesight, so that any and all of the injuries and damages claimed to have been sustained by said libelant were solely and proximately caused by his own carelessness and negligence in the premises.

Wherefore, respondent prays that the said libel be dismissed and that respondent have its costs of suit herein incurred.

/s/ JOHN H. BLACK,

/s/ HENRY W. SCHALDACH,

Proctors for Libelant.

Duly verified.

[Endorsed]: Filed June 2, 1960.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF
LAW AND FINAL DECREE

The above-entitled cause having come on regularly for trial in this Court, before the Honorable

Michael J. Roche, United States District Judge, libelant appearing by his proctor, Francis J. Solvin, Esq., and respondents appearing by its proctors, John H. Black and Henry W. Schaldach, Henry W. Schaldach appearing, and oral and documentary evidence having been introduced and the cause having been submitted to the Court for its decision and the Court being fully advised in the premises now makes the following findings of fact and conclusions of law, and renders the following judgment and decree:

Findings of Fact

1. At all times mentioned herein libelant was a seaman and the Court has jurisdiction of said cause of action under the authority of Section 33 of the Merchant Seaman's Act of June 5, 1920, and all amendments thereto.

2. That on November 1, 1959, respondent Olson Towboat Company and respondent Olson Steamship Company were domestic corporations duly organized and existing under and by virtue of the laws of the State of California, engaged in the shipping business as shipowners and operators of ships with an office and place of business in San Francisco, California, and within the jurisdiction of this Court.

3. That on November 1, 1959, respondents owned or chartered and operated the tugboat Jean Nelson and the barge Florence and operated same on the navigable waters of the United States, to wit, in the Port of Bandon, Oregon.

4. That on November 1, 1959, libelant was employed by respondents to work on said vessels as a deckhand and was acting in the course and scope of his employment.

5. On said date respondents negligently operated said vessels so as to allow the mooring cable to become frayed and defective and as a proximate result thereof, libelant in casting off said cable suffered a laceration and amputation of his right index finger at the first joint.

6. On said date respondents allowed said vessels to be unseaworthy in that said respondents failed to supply libelant with a safe place within which to work aboard said barge and failed to provide libelant with a safe and proper mooring cable in that said line was frayed and defective and libelant in casting off said mooring cable suffered a laceration and amputation of his right index finger at the first joint.

7. That respondents' negligence and the unseaworthiness of said vessels were the proximate cause of libelant's injuries.

8. That libelant has been damaged by said injuries in the amount of \$3,500.00.

Conclusions of Law

From the foregoing findings of fact, the Court makes the following Conclusions of Law:

1. This Court has jurisdiction of the action by reason of Section 33 of the Merchant Seaman's Act of June 5, 1920, and all amendments thereto.

2. As a direct and proximate result of the negligence of respondents and the unseaworthiness of said vessels, libelant was damaged in the sum of \$3,500.00.

Decree

In accordance with the foregoing findings of fact and conclusions of law, it is Ordered, Adjudged and Decreed that libelant Joao Dutra, have and recover from respondents Olson Towboat Company and Olson Steamship Company the sum of \$3,500.00 damages, together with costs of suit incurred herein in the sum of \$.....

Dated this day of April, 1961.

.....,
U. S. District Court Judge.

Certificate of Service by Mail attached.

Lodged April 5, 1961.

[Title of District Court and Cause.]

OBJECTIONS TO FINDINGS AND REQUEST
FOR A SETTLEMENT OF FINDINGS

Respondents herein, Olson Towboat Company, object to Findings of Fact and Conclusions of Law as follows:

I.

That Paragraph 5 of the Findings does not state the evidence insomuch as the Findings refer to the fact that the cable was frayed and defective. The evidence is silent on this point.

II.

Respondents object to Paragraph 6 of the Findings in that it states that "said line was frayed and defective." There is no evidence to substantiate this finding.

Respondents herein request the above-entitled Court to set the matter of settlement and findings down for a day certain so that argument may be had upon the Findings, and respondents be given an opportunity to point out the fact that the Findings are not substantiated by the evidence adduced at the trial in the above-captioned matter.

Dated: April 7, 1961.

/s/ JOHN H. BLACK,

/s/ HENRY W. SCHALDACH,

Proctors for Respondents,
Olson Towboat Company.

Certificate of Service by Mail attached.

[Endorsed]: Filed April 7, 1961.

[Title of District Court and Cause.]

OBJECTIONS TO AMENDED FINDINGS OF
FACT AND CONCLUSIONS OF LAW AND
COUNTER-FINDINGS

Respondent herein, Olson Towboat Company, objects to the Amended Findings of Fact and Conclusions of Law, and proposes Counter-Findings of Fact and Conclusions of Law attached hereto:

I.

That there are no facts sufficient for the Court to make a finding in Paragraph 5 that said "respondents negligently operated said vessels so as to allow the mooring cable to become defective * * *"

II.

That there are no facts sufficient to allow the Court to make a finding that "respondents allowed said vessels to be unseaworthy in that said respondents failed to supply libelant with a safe place within which to work * * *"

It is respectfully submitted that the Counter-Findings attached hereto are in all regards proper, and that the Court upon the hearing on the settlement of Findings should sign the attached Counter-Findings of Fact and Conclusions of Law.

Findings of Fact

1. That on November 1, 1959, respondent, Olson Towboat Company, owned and operated the tugboat "Jean Nelson" and the barge "Florence."

2. That on or about November 1, 1959, libelant was employed aboard the said vessels as a deckhand, at or near the port of Bandon, Oregon.

3. That on said date said libelant sustained an injury to the right index finger while in the course and scope of his employment as a deckhand. That said injury was not a result of any carelessness or negligence on the part of respondents herein, nor as a result of any unseaworthiness on the part of the tugboat "Jean Nelson" or the barge "Florence."

Conclusions of Law

From the foregoing Findings of Fact the Court makes the following Conclusions of Law:

1. That the said Libel herein be, and the same is, hereby dismissed.

2. That there is no carelessness or negligence on the part of respondents or unseaworthiness on the part of the tug "Jean Nelson" or the barge "Florence."

Dated:

.....

Judge of the United States
District Court.

Decree

In accordance with the Findings of Fact and Conclusions of Law,

It Is Ordered, Adjudged and Decreed that the Libel herein be dismissed, and that libelant take nothing by his said Libel.

Dated:

.....

Judge of the United States
District Court.

Certificate of service by mail attached.

Lodged May 8, 1961.

[Title of District Court and Cause.]

AMENDED FINDINGS OF FACT AND CON-
CLUSIONS OF LAW AND FINAL DE-
CREE

The above-entitled cause having come on regularly for trial in this Court, before the Honorable Michael J. Roche, United States District Judge, libelant appearing by his proctor Francis J. Solvin, Esq., and respondents appearing by its proctors John H. Black and Henry W. Schaldach, Henry W. Schaldach appearing, and oral and documentary evidence having been introduced and the cause having been submitted to the Court for its decision and the Court being fully advised in the premises now makes the following findings of fact and conclusions of law, and renders the following judgment and decree.

Findings of Fact

1. At all times mentioned herein libelant was a seaman and the Court has jurisdiction of said cause of action under the authority of Section 33 of the Merchant Seaman's Act of June 5, 1920, and all amendments thereto.

2. That on November 1, 1959, respondent Olson Towboat Company and respondent Olson Steamship Company were domestic corporations duly organized and existing under and by virtue of the laws of the State of California, engaged in the shipping business as shipowners and operators of ships with an office and place of business in San Francisco, California, and within the jurisdiction of this Court.

3. That on November 1, 1959, respondents owned or chartered and operated the tugboat Jean Nelson and the barge Florence and operated same on the navigable waters of the United States, to wit, in the Port of Bandon, Oregon.

4. That on November 1, 1959, libelant was employed by respondents to work on said vessels as a deckhand and was acting in the course and scope of his employment.

5. On said date respondents negligently operated said vessels so as to allow the mooring cable to become defective and as a proximate result thereof, libelant in casting off said cable suffered a laceration and amputation of his right index finger at the first joint.

6. On said date respondents allowed said vessels to be unseaworthy in that said respondents failed to supply libelant with a safe place within which to work aboard said barge and failed to provide libelant with a safe and proper mooring cable in that said line was defective and libelant in casting off said mooring cable suffered a laceration and amputation of his right index finger at the first joint.

7. That respondents' negligence and the unseaworthiness of said vessels were the proximate cause of libelant's injuries.

8. That libelant has been damaged by said injuries in the amount of \$3,500.00.

Conclusions of Law

From the foregoing findings of fact, the Court makes the following Conclusions of Law:

1. This Court has jurisdiction of the action by reason of Section 33 of the Merchant Seaman's Act of June 5, 1920, and all amendments thereto.

2. As a direct and proximate result of the negligence of respondents and the unseaworthiness of said vessels, libelant was damaged in the sum of \$3,500.00.

Decree

In accordance with the foregoing Findings of Fact and Conclusions of Law, it is Ordered, Adjudged and Decreed that libelant Joao Dutra, have and recover from respondents Olson Towboat Company and Olson Steamship Company the sum of \$3,500.00 damages, together with costs of suit incurred herein in the sum of \$.....

Dated this 9th day of May, 1961.

/s/ MICHAEL J. ROCHE,
U. S. District Court Judge.

Receipt of copy acknowledged.

Lodged April 28, 1961.

[Endorsed]: Filed May 9, 1961.

Entered May 10, 1961.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that Olson Towboat Company, a corporation, respondent above named, hereby appeals to the United States Court of Ap-

peals for the Ninth Circuit from the final judgment entered in this action on May 10, 1961.

/s/ HENRY W. SCHALDACH,

/s/ JOHN H. BLACK,

Proctors for Respondent, Olson Towboat Company,
a Corporation.

[Endorsed]: Filed May 15, 1961.

In the United States District Court for the Northern
District of California

In Admiralty No. 28020

JOAO DUTRA,

Libelant,

vs.

OLSON TOWBOAT CO., OLSON STEAMSHIP
CO., the Tug, JEAN NELSON, the Barge,
FLORENCE,

Respondents.

PROCEEDINGS OF TRIAL

Before: Hon. Michael J. Roche, Judge.

Appearances:

For the Libelant:

FRANCIS J. SOLVIN, Esq.,

79 Post Street,

San Francisco, California.

For the Respondents:

HENRY W. SCHALDACH, ESQ.,
233 Sansome Street,
San Francisco, California.

Monday, April 3, 1961, 10:15 o'Clock

The Clerk: Dutro vs. Olson Towboat Company,
for trial.

Mr. Solvin: Ready for the Libelant.

Mr. Schaldach: Ready, your Honor.

The Clerk: Will counsel please state their names
for the record, please.

Mr. Solvin: Francis J. Solvin, 79 Post Street,
Proctor for Libelant.

Mr. Schaldach: H. W. Schaldach, appearing for
H. W. Schaldach and John H. Black, for the Re-
spondent.

The Court: All right. Proceed.

Mr. Solvin: If I might make just a very short
opening statement to acquaint your Honor with the
case that is before your Honor.

The Court: Yes.

Mr. Solvin: This case involves the Libelant, Mr.
Dutra, who was injured on November 1st of 1959.
At that time, he was serving on the tug, Jean Nel-
son and the barge, Florence. He was a messman
but assigned temporary duty of handling lines be-
cause of the fact they were shorthanded. This hap-
pened to be in Bandon, Oregon. As [1*] he lifted
a nylon line to which was attached on the end a

*Page numbering appearing at top of page of original Reporter's
Transcript of Record.

wire loop off of the bit on the barge and picked it up in his two hands to let it go. He did let it go, or it was pulled by another member of the crew who was standing on the shore. This barge, by the way, was tied up to the dock, and in the process of the tug—pulling away by the tug, they were casting the lines, and as he lifted up the wire loop, it had a jagged end, or broken end on the line, or a cut in the wire, and it cut his right index finger, and it evidently sliced off quite a portion, up to the first joint. He immediately took out his handkerchief and wrapped it around his finger and proceeded with his work. When he looked at it later, the Coast Guard was called, and they came and took him to the hospital at Coos Bay. He was hospitalized from November 1st to December 21st, three weeks, during which time they made an incision in his stomach and had his finger there to see if they could perform a grafting operation. That was unsuccessful and he was sent to the Marine Hospital in San Francisco and they amputated the first joint of the right index finger in San Francisco, and he was declared fit for duty on January 6th, 1960. That's the sum and substance of the [2] Libelant's case, your Honor.

Mr. Schaldach: I will wait, your Honor.

The Court: You will wait?

Mr. Schaldach: Yes, I will wait. I have no opening statement to make at this time.

Mr. Solvin: May I proceed, your Honor?

The Court: Yes, proceed.

JOAO PERAERA DUTRA,

Libelant in the above-entitled cause, called in his own behalf, having been first duly sworn, testified as follows:

The Clerk: Would you please state your name for the record.

The Witness: Joao Peraera Dutra.

The Court: You may be seated.

The Clerk: Your full name?

The Witness: Joao Peraera Dutra.

The Court: We will have to have that spelled.

The Witness: J-o-a-o P-e-r-a-e-r-a D-u-t-r-a.

Direct Examination

By Mr. Solvin:

Q. Mr. Dutra, where do you live?

A. Now live in Middletown, California. [3]

Q. Speak up good and loud so everybody can hear you. Middletown, California?

A. Yes, Middletown, California.

Q. Are you married? A. Yes.

Q. Have any children? A. Seven.

Q. And how long have you been going to sea?

A. Oh, I have been in the sea before I was eight years old and I quit the sea and at that time I come to the United States, in '57, and I go back to sea, today, about 4 years.

Q. Now, were you employed as a seaman on or about November 1, 1959?

A. I was employed Olson Tug Company.

(Testimony of Joao Peraera Dutra.)

Q. By the Olson Tug Company?

A. Uh-huh.

Q. And when did you go to work for them?

A. July 12th—June 12th, I mean.

Q. What year? A. 1959.

Q. And in what capacity were you employed?

What [4] were your duties? A. Mess boy.

Q. Messman? A. Yes, messman.

Q. What are the duties of a messman?

A. Oh, only clean, keep clean and wash dishes and help the cook, peel potatoes, all this stuff.

Q. And you were employed as a messman from June—when you went to work in 1959 until you were hurt in November of 1959, is that correct?

A. Yes, sir.

Q. Did you—during that time were you called upon to do other duties?

A. They asked me to help them to handle the lines on the barge, Florence.

Q. Had you ever handled lines while you were employed by them prior to that?

A. I believe once or twice, once in a while.

Q. Your other duties—when you went to sea did you handle lines? A. No.

Q. What type of work had you done before when you [5] went to sea?

A. In this country?

Q. In this country and also before that?

A. Before? Fishing.

Q. Fishing. I see. How much were you earning as a messman on November 1, 1959?

(Testimony of Joao Peraera Dutra.)

A. What you mean?

Q. What were your earnings—how much was your salary?

A. Salary? \$327.00, plus \$2.00 a day, \$387.00.

Q. \$387.00. Did you get overtime?

A. Yes, it all depends, Sundays and holidays also.

Mr. Schaldach: Mr. Solvin, so that you may—we will stipulate on this. I have his records here, your Honor, from the towboat company for the period that he went on there, July (sic) 12th, up until the date he got off, and some retroactive pay he got. He made, from the period June 12th up to and including—was it November—

Mr. Solvin: What I was going to establish was his monthly earnings on the average. I think I can do it very simply by his income tax statements, Mr. Schaldach, and if you want to still do that, it's all right. Here's the 1959 income tax statement from Shipowners. I show you [6] withholding tax statements for 1959, from Olson Towboat Company, 25 California Street, San Francisco. Are these your earnings you earned in '59?

The Witness: That's right.

Q. And they show a total earnings in '59 of \$5,782.33, is that correct? A. That's right.

Mr. Solvin: I'd like to introduce this as Libelant's first in order.

The Court: They may be marked.

The Clerk: Libelant's Exhibit 1.

(Testimony of Joao Peraera Dutra.)

(Thereupon, said withholding tax statement for the year 1959 was marked for identification and entered into evidence.)

Mr. Solvin: During 1959, you were off from November 1st until December 31st? You didn't work November and December, that's when you were injured?

The Witness: That's right.

Q. Were you off some other time in 1959?

A. Some time off.

Q. You say that—was that from May 19th to June 12th? A. That's right.

Q. Why were you off then? [7] A. Strike.

Q. There was a strike during that time and you were out of work? A. Yes.

Q. Then these earnings for 1959 reflect approximately nine months of earnings, is that correct?

A. Yes.

Q. I have here your withholding tax statements for 1960 from Olson Towboat Company and Shipowners & Merchants Towboat Company that show total earnings in 1960 of \$4,975.09, is that correct?

A. That's right.

Mr. Solvin: I'd like to submit those as Libelant's next in order.

The Court: Very well.

The Clerk: Libelant's Exhibit 2.

(Thereupon, said tax withholding statements for the year 1960 were marked for identification and entered into evidence.)

(Testimony of Joao Peraera Dutra.)

Mr. Solvin: In 1960, you were off from January 1st until March 28th, is that correct?

The Witness: That's right.

Q. You were fit for duty January 6th? [8]

A. That's right.

Q. Why were you off March 28th?

A. Strike was on.

Q. You didn't go to work then?

A. That's right.

Q. Were you also off for a seven-week period in 1960? A. Yes.

Q. You had no other earnings in 1960 other than those reported here?

A. No, I didn't have anything else.

Q. So your 1960 earnings reflect a period of about seven months of work, is that correct?

A. That's right.

Q. Now, on November 1st, that was the date you were injured in 1959, about what time of the day was it?

A. I believe 10:00, 10:30, 11:00 o'clock. I don't know exactly what time.

Q. In the morning?

A. Yes, in the morning.

Q. Can you tell the judge here just what happened at that time and that day?

A. Yes, the mate told me to take the line from the [9] loop and——

Q. First go back and start from the beginning. You were on the tug in the morning?

A. I see, O.K., yes.

(Testimony of Joao Peraera Dutra.)

Q. Then what happened?

A. I left the tug and went up on this floating dock.

Q. Floating dock, yes. Where was this?

A. In Bandon.

Q. Bandon, Oregon? A. Yes.

Q. All right. Then what happened?

A. So the barge, Florence, was tied up to a dock, city dock, tied up, the boat tied up in the dock and the crew left the tug and walked to this floating dock and you walk a little further and go on the city dock and from the city dock you go in the barge.

Q. You went on the barge? A. Yes.

Q. Who was with you?

A. The first mate, Morall.

Q. The first mate, Morall, his name is Morall?

A. Yes, Morall. [10]

Q. I see. What did the tug do then?

A. As soon as he left the tug came alongside of the barge in the bow and connected the bridles.

Q. In other words, the tug put its tow line to the bridle on the bow of the barge? A. Yes.

Q. What was the next thing you were to do?

A. Take the spring line and let it go.

Q. How many lines were there tying the barge up to the dock?

A. I believe three or four.

Q. Did you cast off any lines?

A. I cast one in the stern and one in the bow.

Q. The spring line was the next? A. Yes.

(Testimony of Joao Peraera Dutra.)

Q. Then what happened?

A. I picked up the line and held on with my hands until—I wait for the man on the dock to tell me to let it go. It's a heavy line. One thing you have a loop, a wire loop.

Q. This wire loop, that's on the end that goes over the bit on the barge? [11]

A. That's right.

Q. How far did the wire extend?

A. Oh, a fathom—what you call this.

Q. A fathom?

A. Yes. Like this. (Gesturing.)

Q. Extending your hands about three feet?

A. That's right.

Q. Connected to the nylon?

A. That's right.

Q. What hapened then?

A. I hold it and wait for them to tell me to let it go.

Q. Who?

A. For the man of the crew also there to help us working that day. He told me "O.K., let her go" and when I let her go something in my hands cut me and my finger. I didn't see proper because I am in a hurry and blood comes out and I put my handkerchief down here around and keep working but I couldn't do a proper job—in my hand it hurts me. I keep working and we get through and go back on the barge and from the barge back on the tug and I tell the second mate I got hurt and we take it off and [12] see how bad it is and the Cap-

(Testimony of Joao Peraera Dutra.)

tain called the Coast Guard and they picked me up out at sea outside of Coos Bay, Oregon.

Q. Did you look at your finger at any time?

A. Not at the time I got hurt because there was too much blood.

Q. Afterward?

A. After I got the job done I looked.

Q. What did it look like?

A. What you mean?

Q. Your finger. A. Now?

Q. At that time?

A. Oh, blood—I got a bad cut, I didn't know how bad.

Q. Like a slice? A. Like a slice?

Q. Like a fillet?

A. Like this. (Gesturing.)

Q. Was the nail still on? A. Yes.

Q. On the palm side of the finger?

A. I hold up the lines like this. They go this way. (Gesturing.) [13]

Q. What did they do with you then, Mr. Dutra?

A. The skipper is supposed to bring me in the tug to Coos Bay but something comes along and the skipper changes his mind, it would take too long so the Coast Guard was called and they came out and bring me in to Coos Bay, Oregon.

Q. What happened in Coos Bay?

A. They take me to the hospital.

Q. What hospital? A. McAuley.

Q. McAuley, M-c-A-u-l-e-y, McAuley Hospital?

A. Yes, McAuley Hospital and——

(Testimony of Joao Peraera Dutra.)

Q. What did—I am sorry—what did they do for you there?

A. Make me treatment, cut me in the stomach and put my finger inside, what you call graft, something like that.

Q. How long did you stay like that?

A. Three days.

Q. Then what happened?

A. They cut me loose and made me treatment every day, every other day for twenty-one days and they say: “You [14] can go down—gave me a slip—go down to the Marine Hospital” and I came down to the Marine Hospital three days later.

Q. In San Francisco?

A. In San Francisco.

Q. What did they do here?

A. Looked at me all the time and decide to cut the end off and be like this.

Q. And then you were released from the Marine Hospital as an out-patient when?

A. December 15th.

Q. December 15th of 1960 and you were told to go back there later?

A. Yes, every week. Once a week.

Q. And you did that? A. Yes.

Q. You came down from where you were living up in Lake County? A. Yes, came down.

Q. How much did it cost you for transportation? Did you drive down or take a bus?

A. My wife brought me down. \$5.00 or [15] \$6.00 for a trip—it depends on the oil and gas.

(Testimony of Joao Peraera Dutra.)

Q. How many trips down did you make, back and forth?

A. One trip, I have to go in the hospital and go back home again.

Q. And then on January 6th, that was the last trip?

A. The last time, yes, when I been in the hospital.

Q. Maybe this isn't quite clear, Mr. Dutra, I am confused. How many trips did you make from December 15th to January 6th?

A. Three trips.

Q. And then they gave you a fit for duty slip on January 6th? A. That's right.

Q. You could have gone back to work for the company on January 6th if you had wanted to?

A. Yes.

Q. But you didn't? A. No.

Q. Why not?

A. Because it's too far away from home. I got my family there and I have to pay too much transportation. I have to fly and go back for sometimes one day, or two [16] days, fly back or fly down. It costs \$35.00 each way and I can't afford that. I got a big family. I got seven kids.

The Court: What?

The Witness: Seven kids.

The Court: You've got what? Seven what?

The Witness: Kids.

The Court: What are their ages? How old are they?

(Testimony of Joao Peraera Dutra.)

The Witness: They are from twelve to one month.

The Court: What do you mean twelve and one month?

The Witness: The first kid is twelve years old.

The Court: Yes.

The Witness: And the youngest now is one month old.

The Court: One month. Who is taking care of the kids today?

The Witness: Today?

The Court: Yes.

The Witness: My mother-in-law.

The Court: Oh, all right. [17]

Mr. Solvin: So the union was on strike during this period of time, is that correct?

A. That's right.

Q. And the only reason that job up there in Oregon was going on was because they had signed a contract with the union?

A. That's right.

Mr. Solvin: Now, I would like to introduce also as Libelant's next in order, the medical report from the abstract of the Marine Hospital.

The Court: Did counsel see it?

Mr. Solvin: Yes, he did.

The Court: It may be marked.

The Clerk: Libelant's Exhibit 3.

(Thereupon, said report was marked for identification as Libelant's Exhibit 3 and entered into evidence.)

(Testimony of Joao Peraera Dutra.)

Mr. Solvin: Now, Mr. Dutra, you are claiming then that due to this injury you were off work from November 1st through January 6th, two months and one week?

The Witness: Yes, sir.

Q. That is the period of time you were either an in-patient or an out-patient at the Marine Hospital, is that [18] correct? A. That's correct.

Q. And your earnings, or average earnings, or earnings in 1959 were \$5,782.33, and it is your testimony that you only worked approximately nine months in 1959 because you were off two months due to this injury and for almost a month prior to that? A. That's right.

Q. So your average earnings were \$642.48 per month, is that correct? A. That's correct.

Q. What, if any, complaints do you have at the present time about this finger?

A. I am feeling badly every time I shake hands with somebody; my work I can't handle too good; I can't write too good, I mean—the finger—I have to write like this (gesturing), I have to shake hands and sometimes in the night I feel some kind of sharp pain like exactly a needle and once in a while it feels funny, little bit funny feeling any time I touch anything.

Q. At the time you were handling this line, were there any gloves supplied to you by the ship? [19]

A. No.

Q. Any gloves you knew about on the ship?

A. No.

(Testimony of Joao Peraera Dutra.)

Q. Your duties were as a messman at that time and still are? This was a temporary——

A. Yes.

Q. Do you now know why they called you out on this? A. Shorthands (sic).

Q. Shorthanded, not enough crew?

A. Yes, not enough men to work.

Mr. Solvin: I have no further questions—except one thing more, your Honor.

The Court: How long have you been in this country?

The Witness: Four years last January 2nd.

The Court: What country are you from?

The Witness: The Azores.

The Court: What?

Mr. Solvin: The Azores, your Honor.

The Witness: The islands. A small island outside—about 2,000 miles away from New York.

The Court: When are you going back? [20]

The Witness: Me?

The Court: Yes.

The Witness: I don't want to any more.

Mr. Solvin: Is there any objection to this?

Mr. Schaldach: Yes, I object on the ground that all the statements contained in this report are contained in his testimony—have already been made by him.

Mr. Solvin: Your Honor, I have here a copy of the Report of Accident or Illness which was made out by Captain Norman Winters, the captain of this vessel. It is a typed copy, not signed or any-

(Testimony of Joao Peraera Dutra.)

thing. I would like to introduce it as Libelant's next in order. It states in it: "While untying a barge—

Mr. Schaldach: Just a moment. I will object to the introduction of this.

The Court: Sorry, but you will have to leave it out.

Mr. Solvin: Very well, your Honor. No further questions then of this witness, this Libelant.

Cross-Examination

By Mr. Schaldach:

Q. Mr. Dutra, you know Captain Winters? [21]

The Witness: Yes.

Q. Who is he?

A. He's the skipper.

Q. On some of the tugs you operate on?

A. Yes.

Q. And on numerous occasions while you were a messman, you asked him to let you do some deckhand work so you could get overtime, isn't that a fact? A. No, sir.

Q. Isn't it a fact, Mr. Dutra, that on November 1st you were one deckhand short?

A. I believe he be two short.

Q. And isn't it further a fact, Mr. Dutra, you again asked him, Captain Winters, if you could go decking so you could get some extra time?

A. No, sir.

Q. That is not a fact? A. No.

Q. You had handled lines before? A. Yes.

(Testimony of Joao Peraera Dutra.)

Q. And this particular line upon which you hurt your hand, at the time that line was looped around a bit— [22] A. A bit?

Q. Isn't a bit a kind of piece of wood that sticks up along the dock—

A. Not wood, it's steel, it's in the barge.

Q. It's steel. Where was the bit, on the barge?

A. Yes.

Q. Were you on the barge?

A. Yes, I am on the barge, not on the dock.

Q. At the time you hurt your finger, you were on the barge, is that right? A. That's right.

Q. And you were taking this line off of a bit that was located on the barge, is that right?

A. That's right.

Q. And did you get the line off the bit?

A. Yes.

Q. You held it in your hand?

A. By both hands.

Q. It had a loop on it? A. Yes.

Q. Did you hold it this way, or this way (gesturing)?

A. This way (holding both hands up in front of face, [23] palms in).

Q. This way, in the loop? A. Yes.

Q. In other words—how big was that loop?

A. About this big around.

Q. You had it held with both hands?

A. Yes, both hands.

Q. Was there someone on the dock?

A. Yes.

(Testimony of Joao Peraera Dutra.)

Q. Who was he?

A. I don't know his name. He's an oiler, that's all I know.

Q. What did he say? A. Let go.

Q. Let it go?

A. Yes, and I—see the line is straightened out, you got to straighten it out like this, these heavy lines have to straighten out like this at the time you let her go, and it cut me.

Q. In other words, the line went——

A. I let it go.

Q. How far was the barge, the position of the barge [24] you were standing on from the dock?

A. It's close, but the line is like this.

Q. But how far—what was the distance between—— A. I'd say ten or fifteen feet.

Q. .——yourself and the dock?

A. Ten or fifteen feet.

Q. Between yourself and the dock?

A. The dock, yes.

Q. And the man was at the edge of the dock?

A. No, you got me mixed up. From the barge to the dock, yes. From me to the man, longer.

Q. Longer?

A. Yes, because he was what you call oblique.

Q. At an angle?

A. At an angle, whatever you call it.

Q. How long had you been holding this bit—line? A. A few seconds, one or two minutes.

Q. Mr. Dutra, where had you just come from on the barge just before you went over to this bit?

(Testimony of Joao Peraera Dutra.)

A. What do you mean?

Q. What part of the barge had you been on?

A. Up aft. [25]

Q. In the aft—

A. Aft first and I come to the bow.

Q. Which side was the barge moored?

A. Alongside and he told me: "Take the loop off."

Q. And you took the loop off. And you had to bend down?

A. Oh, yes, you have to bend down.

Q. Show me how you did it.

A. Like this (witness bending over). This bit runs this way and you press this way, press it back, pull it back and out.

Q. In other words, the line is taut on the bit?

A. You have to loose it from the dock. First I leaned down and pulled it out and back and pulled it out the way the guy told me and then let it go. It's heavy. You have to stand back like this. When I let it go it cut my hands.

Q. You came from back aft over to this bit?

A. I had a different job, to straighten the lines and wait for the first mate, Morall, to tell me to take the loop off.

Q. Then you went over to where the bit was, is that [26] right? A. That's right.

Q. And the loop around the bit was taut—tight when you first went over there?

A. Yes, it's tight.

Q. Then the man on the dock had to let it loose?

(Testimony of Joao Peraera Dutra.)

A. Yes.

Q. Then would you reach down and pull the loop, pull it back and off the bit? A. Yes.

Q. Then you held it in your hand?

A. Yes.

Q. Then the man said let it go and you let it go? A. Yes.

Q. How long did that whole operation take?

A. I don't know. Fast, fast as you can think. You can't do it slow.

Q. You can't do it slow, you've got to be fast?

A. Yes, you've got to be fast.

Q. And after you let the line go, you noticed your finger was bleeding?

A. That's right. [27]

Q. Is that right? A. That's right.

Q. Did you ever see what the condition of this wire loop—— A. Well——

Q. Just a minute, please. Did you ever see the condition of this wire loop any time before you let it go? A. No.

Q. You don't even know what it is today, do you?

A. No. I can see more or less what it looks like.

Q. Up to this day you don't actually know what caused your finger to be cut, do you?

A. I know something in the loop.

Q. Do you know what actually caused the tear?

A. Something in the loop to cut my finger.

Q. You never saw anything, did you Mr. Dutra?

(Testimony of Joao Peraera Dutra.)

A. No, I couldn't see—you got to pick it up fast and let it go.

Q. You don't know whether there was a cut in that wire, or threads loose about that wire, or anything loose, do you?

A. You talk too fast for me. [28]

Q. Well, I will ask you one question at a time. You can't tell me what condition that line was in because you didn't pay any attention to it, did you?

A. I didn't pay any attention?

Q. You didn't see it?

A. I couldn't pay any attention. You have to work fast. There's no time to take a look.

Q. I understand you have to work fast, but my question has nothing to do with that. I am asking a very simple question. Did you ever see the condition of that line or that loop? A. No.

Q. You don't know whether or not there were any snags or cut wires in there, do you?

A. I didn't see anything.

Q. You didn't see anything? A. No.

Q. So what you are saying, in effect, Mr. Dutra, is because my finger got cut, there must have been something wrong with the wire or part of it——

A. That's right.

Q. ——isn't that what you are telling this [29] Court?

A. Yes, something wrong with the bit or loop.

Q. In other words, Mr. Dutra, you are guessing there was something wrong with the loop, is that correct? A. That's right.

(Testimony of Joao Peraera Dutra.)

Q. Mr. Dutra, that dock that the vessel with the tug was moored to that was in back of the tug, that was a city dock you called it?

A. A city dock.

Q. It's a municipal dock, isn't it? Open to everybody, isn't that right?

A. I believe so. I don't know who it belongs to.

Q. It doesn't belong to the Oliver Olson Company, or the Olson Tug Company?

A. I don't know.

Q. Ever seen other vessels or other tugs—

A. Yes.

Q. —just a minute please, sir. Have you ever seen on your visits up there, other tugs or barges not belonging to the Oliver Olson Company tied up there?

A. Well, most of the time you go there—I seen before Red Stack.

Q. You saw what? A. Red Stack. [30]

Q. Red Stack moors up there?

A. Yes, Red Stack. Before the Olson Tugs—you have your own tugs—well, it's a complicated, long story.

Q. I am not interested in a long, complicated story. I only want to find out if you saw tugs and barges of other companies there?

A. Yes, when I have been there before.

Q. You have? A. Yes, Red Stack tugs.

Q. And these lines you were handling, or this particular line you were handling, that was a shore line, wasn't it? A. What do you mean?

(Testimony of Joao Peraera Dutra.)

Q. It wasn't removed from the dock and pulled over to the vessel? A. No.

Q. It was moved from the barge over to the dock? A. Yes.

Q. Do you know who owned these lines?

A. No.

Q. You don't know whether they were owned by the Oliver Olson or owned by the dock? [31]

A. I believe so. They belonged to the same company because they tied up the barge.

Q. You don't know who they belonged to?

A. Exactly, I don't know. I feel it belongs to them.

Q. How long were you on this Jean Olson—is that the name of the tug?

A. Jean Nelson and Elizabeth Olson belongs to Olson. Both tugs from June 12th to November 1st.

Q. You were on the Jean Nelson?

A. Elizabeth Olson first and after I moved to the Jean Nelson.

Q. You were on two? A. Yes, two tugs.

Q. And how many trips during the time from June 12th when you first went to work, up until November 1st, did you make up to Bandon, Oregon?

A. I don't know. Three or four times.

Q. Would it be more than five or six times?

A. I couldn't say. Maybe three or four times, I believe.

Q. That's a period of about six months, almost six months, Mr. Dutra? [32]

(Testimony of Joao Peraera Dutra.)

A. No, it isn't six months, June 12th, July, August, September, October, November, yes.

Q. Well, let's call it six months roughly.

A. All right.

Q. Have you made, or did you make on those two tugs, trips up there in excess of six times?

A. Maybe not.

Q. Four times?

A. I can't tell. I don't know exactly how many times. I can't keep it in mind. I have been all along the coast. I can't remember.

Q. You were up there at least on two or three other occasions you know of?

A. Yes, I can remember that.

Q. Did you handle any lines on those other occasions?

A. No, they never called me until the time they called me and I go. It's against the union rules.

Q. You can always work as an extra messman—you have overtime?

A. The time they called me, yes.

Q. You got your maintenance paid to you, didn't you, up to January—up until January 1st? [33]

A. What is maintenance?

Q. Your maintenance money?

A. \$8.00 a day, yes.

Q. That's all paid? A. Yes.

Q. Up to January 1st, the time you were declared fit for duty?

Mr. Solvin: January 6th.

Mr. Schaldach: January 6th, fit for duty, all

(Testimony of Joao Peraera Dutra.)

right. You didn't ask anybody for any gloves, did you?

The Witness: No.

Q. Mr. Dutra, during the time, the year 1959, you made \$5,782.33 working for Olson and Ship-owners, right? A. Yes.

Q. That's what these slips amount to?

A. Olson Tugboat, yes.

Q. You said you were off three months during the 1959 period, was that because of a strike?

A. The strike was—I started work in March, 19—no, May, I mean May.

Q. The reason you were off, you couldn't work was because you were on strike, isn't that [34] right?

A. On a strike, yes.

Q. So you only worked nine months because of a strike during the year 1959?

Mr. Solvin: That's not his testimony, Mr. Schaldach.

Mr. Schaldach: How many months?

Mr. Solvin: His testimony is two months due to the injury in November and December of 1959 and only a period of almost a month due to the strike.

Mr. Schaldach: Two months for the injury and one month for strike?

The Witness: That's right.

Q. But during '60, you were off for three months because of the strike?

A. When I got fit for duty, they offered me a

(Testimony of Joao Peraera Dutra.)

job but I couldn't take it because I live too far away. I had my family and I would spend too much money and I let it go.

Q. You could have gone back to work for Olson, your job was open, but you wanted to be around the Bay Area?

A. I wanted to be around my family. I have to take care of them. [35]

Q. You couldn't get a job here. They were on strike in the San Francisco area?

A. That's right.

Q. And the first time you went back to work was in March?

A. In March.

Mr. Schaldach: I have no further questions, your Honor.

Mr. Solvin: I have no further questions, your Honor, and that is the Libelant's case. I will submit the case, your Honor.

The Court: I think you gentlemen can settle this case better than I can. Have you tried to get together?

Mr. Solvin: I have tried, but the offer was such a ridiculous thing I couldn't even consider it.

The Court: I'd advise you to settle it.

Mr. Solvin: You see, this Libelant is just claiming the time he was off work for the period due to the injury, a period of two months and one week. \$1,440.00, according to my calculations is what he has lost due to this. In addition to that, he has lost the [36] first joint of his right index finger which is worth a fair amount in general damages, and I

don't think my offer to Mr. Schaldach was out of line. I think it was a fair and realistic offer, but the one he came back with was so unrealistic it couldn't be accepted.

Mr. Schaldach: Before you can charge anybody with any money damages there has to be some semblance of negligence or liability.

Mr. Solvin: I can cite here many, many cases showing there is no question but what this is an unseaworthy ship and appliance, and whether this line belonged to the dock or the ship, the cases all hold it was used as part of the ship's appliances and equipment, and the line was defective. I think the court can certainly follow the line of reasoning that this man was immediately cut and hurt when he let go this line and there obviously had to be a defective condition there in order for it to happen. There is no contributory negligence on his part. He is a messman by trade and not a handler of lines. The ship was unseaworthy and there was no adequate care aboard it and under all these circumstances and the cases, there is no question but that—— [37]

The Court: What did he offer you?

Mr. Solvin: \$500.00, your Honor.

The Court: Oh, you can do better than that. I will take a recess so you gentlemen can get together.

Mr. Schaldach: Your Honor, I want to point out this is not a *res ipsa* case, and there isn't any showing there was anything wrong with this line. This man and counsel are basing it on conjecture and

what might have happened. There isn't any evidence here at all.

The Court: I suggest to you that you use a little patience and do the best you can. There is a challenge in relation to the liability, legally.

Mr. Solvin: Does your Honor want me to argue the liability? I have a slew of cases that bear out my contention that there was not only negligence but unseaworthiness. The condition of this line was certainly defective and as a basis for unseaworthiness, I think all the decisions uphold that this is a——

The Court: I'd like to have you go into your position to take care of the situation so counsel will understand the state of the record at this time.

Mr. Schaldach: The state of this record is [38] this. I am reading almost verbatim from the questions I propounded to the witness. I asked him, your Honor, "Did you ever see the condition of this wire loop before?" The answer is no. I asked him "To this day do you actually know what caused it—what caused the tear? I don't know. Did you look at either of these lines before you took them off? No, I no looked. You never did look at that? No, no." I asked him to describe to me, your Honor, the method in which he took the bit off and the time lapse and time involved and he said he grabbed it, the slack was on it, he pulled it up and pulled it up here, and certainly, your Honor, if he had grabbed it and pulled it up and there had been anything wrong with the wire, any spurring or jaggedness, he certainly would have noticed it.

He brought it up to eye level as he demonstrated and held it until the man on the dock said let it go and then he let it go. It wasn't a letting go where the rope would come around this way and get some other part that he didn't have his hand on, he merely let it go like this. If there had been any spurring there, your Honor, he would have noticed it at that time. That's the state of the record. There is no showing here [39] as to who the line belonged to, the dock or the vessel. That's another hurdle counsel has to get over. The fact it was on the ship doesn't make it the vessel's line. Secondly, the matter of liability is always one of fault or negligence. There is no negligence shown here and no scintilla of unseaworthiness and that's the basis on which I ask the court to consider this matter. There just isn't any liability.

Mr. Solvin: If I may just close, your Honor. This man is operating as a deckhand under the orders of the first mate. He is ordered to pick up this line. He had no time to go down and minutely examine the line. If he had done that he wouldn't have been working very long for a company. The order was to pick it up and let it go which he did, acting under the orders of the mate and his finger was injured. He had no opportunity to go ashore and examine this line and no opportunity to examine it before he picked it up. If every seaman or deckhand or line handler was required to or examined minutely every line before he picked it up, it just wouldn't be feasible. They would be fired, they wouldn't let them stay on the job. As far as

these appliances are concerned, there is [40] an absolutely non-delegable duty to furnish a seaman with non-defective appliances. This case here of *Litwinowicz vs. Weyerhaeuser Steamship Company*, 179 Fed. Supp. 812 states: "The evidence established that the 'Baltimore dog' was attached to and became a part of the ship's gear. It thus became an appliance appurtenant to the ship. Defendant, under the law could not, by contract or otherwise, delegate to Nacirema the Defendant's duty to the Plaintiffs to provide a seaworthy vessel and appurtenances." That was a case where there was some gear, hoisting gear and it broke while the men were working on the pier. The gear had been supplied by the stevedore company but they couldn't delegate away their duty to furnish these safe appliances. There is liability without fault. Assumption of risk is no defense in this type of case, there is just a non-delegable duty. Unseaworthiness is liability without fault.

The Court: What are the damages in this case. What do you contend?

Mr. Solvin: What I contend to be very fair. He has \$1,440.00 in loss of wages and I would say the loss of his finger and the pain and embarrassment and humiliation [41] that goes with it—how old are you, Mr. Dutra?

The Witness: 36.

Mr. Solvin: I'd say a figure of \$3,500.00 isn't very much in these times for the loss of a right index finger. I think that's a very realistic and fair amount. So, I'd say \$3,500.00 plus the \$1,440.00

—I'd say a judgment of \$5,000.00, your Honor, is not excessive and not out of line.

The Court: Take a recess and you and counsel get together. Do the best you can and if you can't, I will do the rest.

Mr. Solvin: Thank you, Judge.

(Thereupon, Court recessed for approximately one-half hour at 11:00 a.m.)

The Court: What did I say in the chambers?

Mr. Solvin: \$3,500.00, your Honor.

The Court: Enter a judgment for \$3,500.00. Prepare the judgment.

Mr. Solvin: Yes, your Honor.

(Court thereupon adjourned at 11:35 o'clock a.m.)

[Endorsed]: Filed May 15, 1961. [42]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO
RECORD ON APPEAL

I, James P. Welsh, Clerk of the United States District Court for the Northern District of California, do hereby certify that the foregoing and accompanying documents listed below are the originals filed in the above-entitled case, and that they constitute the record on appeal herein as designated by the respondents.

Libel.

Answer to libel.

Proposed findings of fact and conclusions of law.
Objections to findings and request for a settlement of findings.

Objections to amended findings of fact and conclusions of law and counter-findings.

Amended findings of fact and conclusions of law and final decree.

Notice of appeal.

Designation of record on appeal.

Reporter's Transcript.

Libelant's Exhibits Nos. 1, 2, 3 and 4.

In Witness Whereof, I have hereunto set my hand and the seal of the above-entitled court this 16th day of June, 1961.

[Seal] JAMES P. WELSH, Clerk,

By /s/ C. C. EVENSEN,
Chief Deputy Clerk.

[Endorsed]: No. 17432. United States Court of Appeals for the Ninth Circuit. Olson Towboat Company, Olson Steamship Co., the Tug "Jean Nelson," the Barge "Florence," Appellants, vs. Joao Dutra, Appellee. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed: June 16, 1961.

Docketed: June 30, 1961.

FRANK H. SCHMID,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 17432

OLSON TOWBOAT COMPANY,

Appellant,

vs.

JOAO DUTRA,

Appellee.

STATEMENT OF POINTS TO BE RELIED
UPON UPON APPEAL

Comes now appellant, Olson Towboat Company, a corporation, and recites Statement of Points to be Relied Upon Upon Appeal.

I.

The trial court erred in finding that appellant herein negligently operated said vessels so as to allow the mooring line to become defective.

II.

The trial court erred in finding that appellant herein allowed said vessels to be unseaworthy, and that said appellant failed to supply appellee with a safe place to work aboard said barge.

III.

The trial court erred in finding that the said line was in any way defective.

IV.

The trial court erred in finding that appellant's negligence and unseaworthiness of said vessels were the proximate cause of appellee's injury.

V.

The trial court erred in finding that appellee was damaged in the sum of \$3,500.

VI.

The trial court erred in not finding that the mooring cable was not defective.

VII.

The trial court erred in not finding that the vessels were seaworthy.

VIII.

The trial court erred in not finding that appellant supplied appellee with a safe place to work.

IX.

The trial court erred in not finding that the lines provided appellee were not defective.

X.

The trial court erred in not finding that appellee was not entitled to damages.

XI.

That the evidence and the law are against the Findings of Fact and Conclusions of Law, and the

trial court erred in not finding for a judgment in favor of the appellant, and that appellee take nothing by any alleged cause of action contained in his Libel.

/s/ JOHN H. BLACK,

/s/ HENRY W. SCHALDACH,

Proctors for Appellant, Olson Towboat Company, a Corporation.

Certificate of Service by Mail attached.

[Endorsed]: Filed July 26, 1961.

